

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID S. YARNALL,)	
)	
Plaintiff,)	CONSOLIDATED
)	
v.)	CIV. No.: 05-527-SLR
)	
CPL. ANTHONY MENDEZ, DELAWARE)	CIV. NO.: 06-501-SLR
STATE POLICE - TROOP 7, PTLM)	
LOWE, UNKNOWN OFFICERS WHO)	CIV. NO.: 06-529-SLR
RESPONDED TO SCENE OF)	
MILLSBORO POLICE, AND PFC)	
BUCHERT,)	
)	
Defendants.)	

REPLY BRIEF OF DEFENDANTS PTLM LOWE AND PFC BUCHERT
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

AKIN & HERRON, P.A.
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Dated: May 23, 2007

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<u>Celotex Corp. v. Catrett</u> 4 477 U.S. 317 (1986)	
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ARGUMENT

1. PLAINTIFF HAS FAILED TO PRODUCE EVIDENCE
SUFFICIENT TO RAISE A QUESTION OF FACT AS
TO THE REASONABLENESS OF THE OFFICERS' USE
OF FORCE

Plaintiff's Answering Brief asserts that Ptlm Lowe and PFC Buchert "lie(s) about everything" and restates allegations in the Complaint. Plaintiff did not include any affidavits or other supporting evidence. Plaintiff has "failed to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

The Affidavits of Officers Lowe and Buchert show they did not use excessive force while assisting Cpl. Mendez in his arrest of plaintiff. Because the supporting materials submitted by defendants establish that defendants Lowe and Buchert acted reasonably, and plaintiff puts forth no evidence to the contrary, there is no genuine issue of material fact. See Dowling v. City of Philadelphia, 855 F.2d 136, 143-144 (3d Cir. 1988) (Plaintiff may not rely on denials of defendant's contentions and reiteration of allegations in the Complaint to defeat motion for summary judgment but must instead point to affidavits or other evidence which supports his claim.)

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Opening Brief of Defendants Ptlm Lowe and PFC Buchert, defendants Ptlm Lowe and PFC Buchert respectfully request that summary judgment be entered on their behalf.

AKIN & HERRON, P.A.

/s/ Bruce C. Herron

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NOTICE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 2007, a copy of DEFENDANTS PTLM LOWE'S AND PFC BUCHERT'S REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT was mailed first class to the following party:

David S. Yarnall
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and was electronically filed with the Clerk of the Court using CM/ECF which will send notifications of such filing(s) to counsel listed below:

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